

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

INGRIDA E.

Claimant,

v.

FRANK D. LANTERMAN  
REGIONAL CENTER,

Service Agency.

OAH Case No. L 2006110352

**DECISION**

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at the Frank D. Lanterman Regional Center in Los Angeles, California, on January 24, 2007.

Julie A. Ocheltree, Attorney at Law, represented the Frank D. Lanterman Regional Center (FDLRC or service agency).

Lucio E. (claimant's father) represented Ingrida E. (claimant).<sup>1</sup>

The record was closed, and the matter was submitted on January 24, 2007.

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<sup>1</sup> Claimant and claimant's father are referred to by their first names and the first initials of their last names to protect their privacy.

## ISSUE

The following issue is to be resolved:

Whether the service agency should fund medical services from the Children's Hospital of Los Angeles, or other qualified vendor, for the purpose of providing claimant with clinical speech therapy services.

## EVIDENCE

1. Claimant exhibits 1 through 10.
2. Service agency exhibits A through X.
3. Testimony of Lucio E., Candice LeMere (service agency regional manager), Zena Begin (service agency coordinator), and Mandana Moradi, Psy.D.

## FACTUAL FINDINGS

The following facts were established:

1. Claimant is a seven year-old female, born on January 9, 2000, who lives at home with her mother, father, and older brother.
2. Claimant currently attends a first grade special day class at Roosevelt Elementary School, which is in the Burbank Unified School District (BUSD). The school district provides claimant with special education services including speech and language therapy and occupational therapy.

### *Background*

3. Although claimant's developmental delays were apparent at a very young age, claimant was not referred to the service agency until she began preschool, at about four years of age. A preschool evaluation of claimant revealed autistic-like behaviors, including inconsistent echolalia, under 10 spoken words, lack of eye contact, aggressive behaviors, and no interaction with other children. Due to these characteristics, the preschool speech therapist referred claimant the service agency.

4. The service agency's initial interview and assessment of claimant was in May 2004. Based on a diagnosis of autism, claimant has been a consumer of FDLRC since July 2004, but has not received any therapeutic services from the service agency.

5. In August 2004, claimant's mother approved claimant's initial Individual Program Plan (IPP). Services and supports to be provided by the service agency included exploration of respite services and social skills group therapy, and referrals to appropriate dentists. Each week, two 30-minute speech therapy sessions and one 30-minute occupational therapy session were to be provided by claimant's school district "on school site." Claimant's medical needs were to be funded through Medi-Cal.

6. Pursuant to claimant's Individualized Educational Program (IEP) dated January 12, 2006, claimant was to attend a special day class, Monday through Friday. The Foothill Special Education Local Plan Area was to provide claimant with speech/language therapy and occupational therapy services. At the request of claimant's parents, an IEP addendum dated March 28, 2006, increased the intensity of claimant's speech/language therapy from two 30-minute sessions to three 30-minute individual sessions per week.

7. On February 8, 2006, the service agency and claimant's parent's completed an annual review of claimant's IPP. Under "Purchase of Services" was the following statement: "SC will explore a speech therapy assessment to assist family in obtaining speech service from Burbank Unified School District." Both of claimant's parents signed the annual review document.

Abraham Estrada was claimant's initial service coordinator. He recommended that claimant's parents pursue speech services for claimant through BUSD. Mr. Estrada informed claimant's parents that the service agency would not provide speech services to claimant because such services were considered "educational," and therefore, the responsibility of claimant's school district. In response, claimant's parents requested that the service agency provide them with a letter of denial of speech services, which they could use to obtain those services from the school district.

8. In a letter dated March 21, 2006, the service coordinator provided claimant's parents with a document denying their request for service agency funding of one-on-one intensive speech therapy. The basis for denial was that "speech therapy was considered an educational service and was therefore the primary responsibility of the school district to fund." Mr. Estrada informed claimant's parents that the Lanterman Act "prohibits regional centers from 'supplanting' the budget of any agency that has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services." He also informed them that the service agency was required to pursue all funding sources for services, including school districts. The service coordinator offered to assist the parents by obtaining an independent speech therapy assessment of claimant, to help them obtain the speech therapy they desired for claimant from BUSD.

### *Childrens Hospital of Los Angeles*

9. Since at least April 2006, claimant's father wanted claimant to start receiving medical and speech therapy services from Childrens Hospital of Los Angeles (CHLA). He came to believe that claimant needed the services offered by CHLA because she was not responsive to the therapy being offered by her school district. Claimant's father decided that claimant needed to be treated at CHLA after he spoke with friends and relatives regarding the success of CHLA's programs in treating other children similar to claimant.

10. In April 2006, claimant filed a Fair Hearing Request with the service agency to challenge the denial of speech therapy services." Claimant's father contended that the service agency never provided him with a list of the services and supports the service agency would provide for claimant. With reference to the service coordinator's letter of March 21, 2006, claimant's father opined that claimant's need for intensive speech therapy "is medical in nature and different from the service provided by the schools" and that the speech therapy offered by the school district "does not benefit a child whose disability prevents the exchange of communication between teacher and student." Claimant's father also did not want the service agency to provide any behavioral intervention therapy if it would not done in conjunction with claimant receiving speech therapy services at CHLA.

### *Assessments*

11. In June 2006, the service agency approved funding for separate speech, behavioral, and psychological assessments of claimant.

12. In July 2006, at the request of claimant's father, the service agency designated a new service coordinator for claimant. The new service coordinator was Zena Begin.

13. On July 22, 2006, claimant's speech and language evaluation was completed by speech-language pathologist Dana E. Briggeman, M.S., CCC-CLP. Ms. Briggeman, who is also a school speech-language pathologist, reported that claimant "presents with severe communication and social delays secondary to a diagnosis of autism" and that these delays have a "negative impact on her ability to successfully access educational curriculum." She recommended one hour per week of speech and language therapy on an individual basis in a clinical setting. Claimant's parents should have opportunities to participate in sessions and become a more integral part of the intervention.

In a letter dated January 22, 2007, Ms. Briggeman clarified the recommendations she made in her July 22, 2006, report. She stated that the recommendation of one-hour per week of speech therapy in a clinical setting was based on her understanding from claimant's parents that, at the time of the assessment, the school district was providing

claimant with only one 30-minute therapy session per week. Additionally, her original recommendation was not meant to imply that school-based speech/language therapy is inferior to clinic-based therapy, because “all speech-language therapists working across all settings . . . have the same education, training, and credentials” (i.e., a master’s degree, state license, and certification of clinical competence by the American Speech-Language Association) and are not, in any setting, supervised by other professionals, such as doctors or nurses.” She stated that, if claimant is currently receiving three 30-minute therapy sessions per week, she should not require any additional speech-language services in an outside setting.

14. On August 14, 2006, claimant was evaluated by Mandana Moradi, Psy.D., for the purpose of determining claimant’s current adaptive and cognitive functioning and to assist with treatment planning. Dr. Moradi confirmed a diagnosis of Autistic Disorder in the mild to moderate range and found that claimant’s most significant deficit was in the communication area. Although claimant’s parents are caring, concerned, and actively involved in seeking help for claimant, Dr. Moradi found that they have not had the benefit of parent training and were at a loss on how to address claimant’s difficulties. Dr. Moradi made several recommendations based on her assessment. She stated that claimant should continue to receive an appropriate educational program that includes speech therapy, as recommended by her clinician, and use of a one-to-one aid who is trained and supervised in behavior modification/applied behavior analysis (ABA). Active engagement in intensive instructional programming was recommended for a minimum of a full school day, five days per week (for at least 25 hours), with “full year programming.” She also recommended that claimant undergo a social skills assessment and participate in a social skills group once or twice weekly. Dr. Moradi recommended parent training in behavior modification/ABA with emphasis on establishing consistency with their behavior interventions. Dr. Moradi stated that an ABA program needs to be implemented in the home, which includes one-to-one intervention with claimant, geared to increase functional communication. The school district’s ABA program for claimant and her in-home ABA program should be coordinated to insure consistency across all settings, environments, therapists, and caregivers.

15. In September 2006, H. Keith Massel, Ph.D., BCBA, and Mario Vega, M.S., Assessor, of Vista Psychological Center, Inc., completed a psychological assessment of claimant. Their assessment report recommended that claimant and her family receive services in the areas of functional communication skills, compliance, and social skills. Specifically, they recommended that claimant and her family receive a total of 96 hours, over four months, and supplemental service hours, “in order to accommodate an intense intervention and to provide claimant with consistent interaction with the behavior interventionist and longer exposure to differential reinforcement of her replacement behaviors.” The recommended therapy would be followed by a re-evaluation of claimant.

## *Refusal of Services*

15. In September 2006, claimant's father spoke with Zena Begin regarding services that the service agency would provide for claimant. Ms. Begin informed claimant's father that Dr. Moradi had recommended a social skills program for claimant. Claimant's father replied that he did not want to have claimant begin such a program because she was not ready and would not benefit from such a program until she could communicate. Claimant's father also informed the service coordinator that the school district was not helping claimant with her communication skills. He also rejected the service agency's offer to assist him in working with the school district.

17. In October 2006, claimant's father again spoke with Ms. Begin. He requested that the service agency fund clinical speech therapy that would be provided through Children's Hospital of Los Angeles (CHLA). In response, the service coordinator encouraged claimant's father to request an Individualized Educational Program (IEP) meeting with claimant's school district to request such therapy. He replied that it is the service agency's responsibility to provide funding for clinical speech therapy, which he could not pay either directly or through SSI benefits.

When asked if he was willing to accept the service agency's offer of behavioral intervention services, as recommended by Vista Psychological, Inc., and social skills therapy, as recommended by Dr. Moradi, claimant's father replied that he did not want those services provided until the issue of speech therapy was resolved.

18. On October 23, 2006, the service agency forwarded another letter of denial in response to claimant's request for clinical speech therapy. The rationale offered for the denial was the same as set forth in the service agency's March 23, 2006 letter. The service agency's new letter stated that claimant was then receiving 90 minutes of speech therapy per week through BUSD, and if claimant's father thought that was not enough to meet claimant's needs, he should request an IEP meeting to increase or modify the speech services being provided by the school district.

19. In a letter dated October 25, 2006, claimant again refused the service agency's offer of assistance and support to help obtain desired services from claimant's school district. Claimant's father cited *Cedar Rapids Community School District v. Garrett* (1999) 526 U.S. 66, for the proposition that, under the Individuals with Disabilities Education Act, the provision of special education and related services excludes medical services other than those performed for diagnostic and evaluation purposes. He concluded that, since the claimant's school district was not required to fund the medical services he wanted claimant to receive from CHLA, responsibility for said funding should be the responsibility of the service agency.

20. On November 15, 2006, claimant filed a Fair Hearing request, seeking a decision that orders the service agency to "purchase from CHLA, the necessary medical supports and services, directed to treat the serious neurological disorders and speech

impairments, which prevent her from communicating or producing any speech . . . .” This fair hearing ensued.

21. On January 11, 2007, claimant’s father spoke with Zena Begin. During that conversation, claimant’s father referred to medical intervention that should be funded by the service agency to meet claimant’s dietary needs “due to toxins in her system” that are “affecting her brain.” He also confirmed that claimant was still receiving three 30-minute speech therapy sessions per week, through BUSD.

22. During this Fair Hearing, claimant’s father offered no assessment, evaluation, or professional judgment to establish or recommend that claimant should receive speech/language or other therapy or treatment from CHLA. He admitted that he only relied upon information he received from friends and relatives who paid for their children to receive therapy at CHLA with very positive results, i.e., “their children could speak.” However, he offered no evidence with respect to the preliminary assessment or the needs of these children who received therapy at CHLA, or the specific components of their therapy/treatment programs.

23. As a result of the passage of time, and particularly the continuing delay in initiating behavioral intervention/ABA and social skills therapy, claimant is being denied sorely needed therapy. Problems inherent in relatively late identification of claimant’s diagnosis of autism and referral to the service agency are being compounded by claimant’s failure to accept and initiate the recommended services being offered by the service agency, which include respite care, behavioral intervention/ABA, social skills therapy, and advocacy in working with claimant’s school district. While none of these services would per se result in additional speech therapy, they would form part of the comprehensive treatment program that claimant needs, and which would contribute toward developing claimant’s ability to communicate with others.

As indicated by claimant’s father in his correspondence with the service agency, and as well-established by peer-reviewed research, “time is of the essence” when treating children with autism. Early intervention of therapies, particularly with respect to the delivery of intensive ABA, offers the best opportunities for successful treatment of autistic children.

## LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to Welfare and Institutions Code section 4710 et seq.

2. Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that the party is asserting. (Evid. Code, § 500.) Where a claimant seeks to establish eligibility for government benefits or services not previously funded, the burden of proof is on him. (See, e.g., *Lindsay v. San Diego Retirement Bd.* (1964) 231

Cal.App.2d 156, 161 (disability benefits); *Greatorex v. Board of Admin.* (1979) 91 Cal.App.3d 54, 57 (retirement benefits). However, a service agency seeking to change a service previously provided to a claimant has the burden to demonstrate its decision is correct.

In this case, claimant is seeking service agency funding of medical services from CHLA or other qualified vendor for the purpose of providing claimant with clinical speech therapy services.

Claimant's request involves new services, not previously provided to claimant under funding by the service agency. Therefore, claimant has the burden of establishing that the service agency should fund the requested services.

3. The service agency must provide services to meet its obligations under the Welfare and Institutions Code. Welfare and Institutions Code section 4501 states, in pertinent part:

The State of California accepts a responsibility for persons with developmental disabilities and an obligation to them which it must discharge. . . . A consumer of services and supports, and where appropriate, his or her parents, legal guardian, or conservator, shall have a leadership role in service design.

An array of services and supports should be established which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community. . . .

Services and supports should be available to enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age. Consumers of services and supports, and where appropriate, their parents, legal guardian, or conservator, should be empowered to make choices in all life areas.

. . . It is the intent of the Legislature that agencies serving persons with developmental disabilities shall produce evidence that their services have resulted in consumer or family empowerment and in more independent, productive, and normal lives for the persons served.

4. Welfare and Institutions Code section 4502.1 states:

The right of individuals with developmental disabilities to make choices in their own lives requires that all public or private agencies receiving state funds for the purpose of serving persons with developmental disabilities, including, but not limited to, regional centers, shall respect the choices made by consumers or, where appropriate, their parents, legal guardian, or conservator. Those public or private **agencies**



**shall provide consumers with opportunities to exercise decisionmaking skills in any aspect of day-to-day living and shall provide consumers with relevant information in an understandable form to aid the consumer in making his or her choice.** [Emphasis added.]

5. Welfare and Institutions Code section 4512, subdivision (b) states, in pertinent part:

Services and supports for persons with developmental disabilities' means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. **The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process.** The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and **shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option.** . . . . Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan." [Emphasis added.]

6. Welfare and Institutions Code section 4646.5, subdivision (a) states, in pertinent part, that the individual program plan shall include the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. . . .

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. . . .

[(c)] . . . [(c)]

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service

responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. . . .

(5) When agreed to by the consumer, the parents or legally appointed guardian of a minor consumer . . . a review of the general health status of the adult or child including a medical, dental, and mental health needs shall be conducted. . . . If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate.

7. Welfare and Institutions Code section 4648, states, in pertinent part:

In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan . . . .

[¶] . . . [¶]

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

8. Welfare and Institutions Code section 4659, subdivision (a) states, in pertinent part:

[T]he regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including . . . **school districts**, and federal supplemental security income and the state supplementary program.” [Emphasis added.]

9. Since claimant is school-aged and in the first grade, for purposes of Welfare and Institutions Code sections 4659 and 4648, subdivision (a)(8), claimant’s school district is a generic resource not only for those aspects of education that traditionally occur in a classroom, but also extend into the home setting, where academic skills are merged with other learning experiences.

Beyond the classroom environment, all other learning domains are, at least potentially, areas in which the Lanterman Act may require regional centers to provide their consumers with needed supports and services. In those instances when a generic agency fails or refuses to provide a service agency consumer with those supports and services that are needed to allow that consumer to maximize her potential for a normal life, the Lanterman Act requires the service agency to make up the service shortfall.

10. In this matter, claimant did not establish a need for the service agency to fund services beyond that which claimant is either currently receiving from her school district or are being offered by the service agency but being refused by claimant's parents. With respect to CHLA as a service provider, claimant did not establish that service agency funding of speech/language therapy or other services through CHLA would provide results that are better or more cost-effective than the speech/language services claimant is currently receiving through her school district.

While choices and preferences of claimant's parents are to be considered in determining the services and supports that the service agency should provide to claimant, claimant's needs must first be identified by qualified individuals. In this matter, the service agency provided for a series of assessments by qualified individuals who evaluated claimant's needs and made appropriate recommendations for the services and supports that should be provided by the service agency and/or claimant's school district.

Now that claimant's current needs have been identified, services and supports must be mobilized to satisfy those needs. Since claimant is of school age, her school district is required to assume primary responsibility for certain supports and services, such as speech/language therapy. Other services and supports, such as respite care, are typically provided by the service agency. Still other services and supports, such as behavioral intervention/ABA are often a shared responsibility between the service agency center and school district. It is also important for claimant's parents to share in the responsibility for providing services by participating and receiving training, where appropriate, to insure consistency and continuation of those therapies provided by the service agency and/or claimant's school district. To that end, claimant's parents, the service agency, and claimant's school district need to effectively communicate and decide which options for delivery of services are cost-effective and supported by the Lanterman Act. Decisions that are reached must be incorporated in claimant's IPP.

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## ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant Ingrida E.'s request that the Frank D. Lanterman Regional Center fund medical services from the Childrens Hospital of Los Angeles or other qualified vendor for the purpose of providing claimant with clinical speech therapy services is denied.

February 1, 2007.

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ROBERT S. EISMAN  
Administrative Law Judge  
Office of Administrative Hearings

**This is a final administrative decision, each party shall be bound by this decision. Either party may appeal the decision to a court of competent jurisdiction with 90 days of receiving notice of the final decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**